NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD OF PRIVATE POSTSECONDARY EDUCATION
ARTICLE 2. FEES

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**
   R4-39-201 — Amendment

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
   Authorizing statute: A.R.S. § 32-3004

   Implementing statute: A.R.S. § 32-3027

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
   Name: Teri Candelaria, Executive Director

   Address: Arizona State Board for Private Postsecondary Education
   1400 West Washington, Room 260
   Phoenix, Arizona 85007

   Telephone: (602) 542-5709

   Fax: (602) 542-1253

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
   The proposed rule is being amended to establish prescribed fees.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**
   Current licensees of the Arizona State Board for Private Postsecondary Education will bear the costs of the increased license renewal fees and supplemental license fees. The application for an Original License remains the same. As a 90/10 Agency, the Agency and the State of Arizona will benefit because the increase in fees will general additional revenue. In addition, the additional funds will enable the Agency to increase its regulatory effectiveness. As a result, current licensees and their students will also benefit from the Agency's increased effectiveness.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
   Name: Teri Candelaria, Executive Director

   Address: Arizona State Board for Private Postsecondary Education
   1400 W. Washington Street, Room 260
   Phoenix, Arizona 85007

   Telephone: (602) 542-5709

Fax: (602) 542-1253

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: August 19, 1998

Time: 10 a.m. to 10:30 a.m.

Location: 800 West Washington Street, 1st Floor Auditorium
Phoenix, Arizona 85007

Nature: Oral Proceedings before the Arizona State Board for Private Postsecondary Education

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

10. **Incorporations by reference and their location in the rules:**
Not applicable.

11. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD OF PRIVATE POSTSECONDARY EDUCATION

ARTICLE 2. FEES

Section
R4-39-201. Fees

ARTICLE 2. FEES

R4-39-201. Fees

A. The filing fee for an original ~~private vocational program license or~~ license to operate a private vocational or degree-granting programs is ~~to grant degrees shall be~~ $800

~~A.~~ ~~Annual renewal fee for an applicant shall be the following amount for an applicant with the following annual gross tuition revenue:~~ The annual filing fee for a license renewal to continue to operate private vocational or degree-granting programs is the following amount based upon the following annual gross tuition revenues:

~~1. Less than $10,000 annual gross tuition revenue, $250.00~~
~~2. $10,000/$24,999 annual gross tuition revenue, $450.00~~
~~3. $25,000/$99,999 annual gross tuition revenue, $550.00~~
~~4. $100,000/$249,999 annual gross tuition revenue, $600.00~~
~~5. $250,000/$499,999 annual gross tuition revenue, $750.00~~
~~6. $500,000/$999,999 annual gross tuition revenue, $1,000.00~~
~~7. $1,000,000/$2,499,999$annual gross tuition revenue, $1,30000~~
~~8. $2,500,000/$6,999,999 annual gross tuition revenue, $1,550.00~~
~~9. $7,000,000 or more annual gross tuition revenue, $1,800.00~~

1. Less than $50,000 annual gross tuition revenue, $600.00.
2. $50,000/$249,999 annual gross tuition revenue, $750.00.
3. $250,000/$449,999 annual gross tuition revenue, $1,000.00.
4. $500,000/$999,999 annual gross tuition revenue, $1,300.00.
5. $1,000,000/$2,499,999 annual gross tuition revenue, $1,650.00.
6. $2,500,000/$6,999,999 annual gross tuition revenue, $2,000.00.
7. $7,000,00 or more annual gross tuition revenue, $2,300.00

~~B.~~ The filing fee for an application for a supplemental license to operate ~~Supplemental application fee for licensure of~~ new or additional vocational programs or degree-granting programs is $500. ~~$300.00~~

~~C.~~ The filing fee for an application for a supplemental license to operate licensed vocational or degree-granting programs from a new location or an additional location is $500.00. ~~Supplemental application fee for a change in ownership of an educational institution offering private vocational programs or granting degrees, $300.00.~~

~~D.~~ The filing fee for an application for a supplemental license to continue to operate licensed vocational or degree-granting programs upon a change of ownership is $500.00. ~~Supplemental application fee for a change in ownership of an educational institution offering private vocational programs of granting degree, $300.00.~~

~~E.~~ The fee for an on-site verification, inspection, or investigation is the actual cost incurred or $500.00, whichever is less. ~~The filing fee for an on site verification and inspection shall be individually approved by the board and shall be the actual cost incurred by the board as a direct result of conducting the on site verification /inspection up to, $150.00~~

~~F. Filing fee for an original agent license if the agent is employed by an educational institution that has a physical location in this state, $50.00~~

~~G. Filing fee for an original agent license if the agent is employed by an educational institution that does not have physical facilities in this state, $100.00~~

~~H. Annual renewal fee for agent license, $30.00.~~

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

Preamble

1. Sections Affected / Rulemaking Action

R7-3-501	Amend
R7-3-504	Amend
R7-3-505	New Section
R7-3-506	New Section
R7-3-507	New Section

2. The specific authority for rulemaking, including both the authorizing statute (general)and the statutes the rules are implementing (specific):

Authorizing Statutes: A.R.S. §§ 15-1852(C)

Implementing Statutes: A.R.S. §§ 15-1873 et seq.

3. The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:

Name: Verna Allen, Executive Director

Address: 2020 North Central Avenue, Suite 275
Phoenix, AZ 85004

Telephone: (602) 229-2595

Fax: (602) 229-2599

4. An explanation of the rules, including the agency's reasons for initiating the rules:

R7-3-501 through R7-3-507 will provide procedures for implementing the Arizona Family College Savings Program through financial institutions as a public-private partnership. These rules will establish a uniform and consistent manner in implementing the Arizona Family College Savings Program.

5. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous granting of authority of a political subdivision of this state.

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

a. An identification of the proposed rulemaking: Arizona Family College Savings Program, R7-3-501 through R7-3-507, adopted pursuant to A.R.S. § 15-1873 *et. seq.*

b. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: Persons directly affected are account holders, beneficiaries, and financial institutions. Account holders will bear costs in paying an application fee and a potential maintenance fee. Account holders will benefit from the Program as the interest is tax deferred and taxed at the income bracket of the beneficiary. Beneficiaries will directly benefit from the Program as having money available to attain a college education. Financial institutions will bear the cost of paying a marketing fee and will benefit by increasing the deposits into their financial institutions.

c. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking: The Commission will bear administrative costs in keeping track of the information received from the financial institutions and enforcing the penalties for non-qualified withdrawals.

d. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking: Financial institutions will bear the cost of paying a marketing fee. The Office of Administrative Hearings will hear any causes which involve an appeal from the Commission.

e. A statement of the probable impact of the proposed rulemaking on small business: Some financial institutions are small businesses and will need to bear administrative costs in implementing and maintaining the Program.

f. A statement of the probable effect on state revenues: Additional funding for the Commission will be needed to implement the program.

g. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: Due to the nature of the various statutory requirements, less intrusive or less costly alternatives were not available.

7. **The name and address of the agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

   Name: Verna Allen, Executive Director

   Address: 2020 North Central Avenue, Suite 275
   Phoenix, AZ 85004

   Telephone: (602) 229-2595

   Fax: (602) 229-2599

8. **The time, place, and nature of the proceedings for this adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons, may request an oral proceeding on the proposed rules:**

   Date: August 18, 1998

   Time: 9 a.m.

   Location: University of Phoenix
   4615 East Elwood, Large Conference #400B
   Phoenix, Arizona 85040

   Nature: Oral Proceeding and Adoption of Rules

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules.**
   Not applicable.

10. **Locations for incorporations by reference in the rules:**
    Not applicable.

11. **The full text of the rules follows:**

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Section
R7-3-501. Definitions
R7-3-504. Changing Designated Beneficiary
R7-3-505. Contribution Limitations
R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties
R7-3-507. Oversight of Financial Institutions

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-501. Definitions

A. "Cash" means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, and wire transfer will be treated as cash.

B. "Certification" means a signed, written statement by an account owner authorizing withdrawal for specific educational item(s) or service(s). If the account owner has a guardian, conservator or another person appointed to manage his/her personal affairs or an individual granted power of attorney such individual shall have the power to sign the certification.

~~D~~C. "Code" means the Internal Revenue Code.

~~C~~D. "Commission" means the Commission for Postsecondary Education as defined in A.R.S. § 15-1871.

~~D~~E. "Committee" means the Family College Savings Program Oversight Committee as defined in A.R.S. § 15-1871.

F. "Direct the investment" means specifying or attempting to specify the individual business entities either individually, or within a fund or other group of business entities held as an investment group, into which the account holder's contributions or earnings will be invested. Direct the investment does not mean selecting an initial type of investment program if more than 1 program is offered.

~~E~~G. "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.

R7-3-504. ~~Set-up and Maintenance of Accounts – Reporting of Non-qualified Withdrawals; Penalties~~ Changing Designated Beneficiary

~~A. Pursuant A.R.S. §§ 15-1875(H),(I), and (J), the Commission has authority to assess penalties for non-qualified withdrawals. In order to make a withdrawal, the account holder or the account holder's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871. If a financial institution has reason to believe that a non-qualified withdrawal has been made, the financial institution shall report that fact to the Commission within 3 business days, in writing, including identification of the account holder, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. The financial institution may, but shall not be required to, notify the account holder and beneficiary of any such communication to the Commission.~~

~~B. If the Commission determines that a withdrawal is non-qualified, the Commission shall assess a 10% penalty on the amount of the non-qualified withdrawal. Within 3 business days, the Commission shall give written notification to the financial institution and the account holder that the withdrawal has been determined to be non-qualified and that a 10% penalty will be assessed. The account holder may dispute the Commission's determination by submitting written notice, to the Commission, within 30 days from the date of notice. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account holder. If the account holder disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.~~

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in A.R.S. § 15-1871(8), of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary. The change shall be effective upon the financial institution's receipt of such certification.

R7-3-505 Account Balance Limitations

A. On or before April 15th of each calendar year, an account holder shall certify to the Commission that for each designated beneficiary, and to the best of the account holder's knowledge, the balance in all state tuition programs as defined in § 529 of the Code, does not exceed the lesser of:
   (1) $500,000; or
   (2) The cost in current dollars of qualified higher education expenses the account holder reasonably anticipates the designated beneficiary will incur.

B. The certification described in R7-3-505(A), above, shall also set forth the aggregate total balances in multiple accounts, if any, that the account holder has established for each designated beneficiary.

C. Each year, the Commission shall review the amount set forth in R7-3-505(A) above.

R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

A. An account owner may withdraw funds from an account at anytime. The designated beneficiary of an account shall not have any authority to withdraw funds from an account unless the account is structured to give the designated beneficiary such right of withdrawal upon matriculation or upon incurring qualified higher education expenses.

B. Pursuant to A.R.S. §§ 15-1875 (H), (I), and (J), the Commission has authority to assess penalties for non-qualified withdrawals. In order to make a withdrawal, the account holder or the account holder's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871. If an account holder fails to certify that a withdrawal is qualified, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 15% of that portion of the withdrawal which constitutes income under § 72(b) of the Code. The amount of said withholding shall be remitted to the Commission within 7 calendar days from the date of the withholding. The financial institution shall report any such withholding, in writing, to the Commission within 3 business days, including identification of the account holder, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. The financial institution shall notify the account holder and beneficiary, in writing, of any such withholding.

C. The account holder may dispute any withholding made by a financial institution under R7-3-506(B) by submitting written notice, to the Commission, within 30 days from the date of such withholding. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account holder. If the account holder disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 *et. seq.*

R7-3-507. Oversight of Financial Institutions

A. Disclaimer of State liability. Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by this state and neither the principal deposited nor the investment return is guaranteed." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed or provided by any other method to facilitate compliance.

B. Reporting Requirements.
   1. To account holders, each calendar quarter, every financial institution shall provide each account holder with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned and any penalties charged, and an ending balance. Additionally, the statement for the 4th calendar quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, an annual total of any penalties charged, and a year-end balance.
   2. To Commission, a copy of the statement described in R7-3-507(B)(1) above shall be sent to the Commission. Additionally, each financial institution shall provide the Commission with the information required by A.R.S. § 15-1874(F).

C. Access to books and records. No contractor shall have access to the books and records of a financial institution or Program Manager unless the Commission or its designee 1st approves, with or without modification, such request for access.

D. Non-renewal. The Commission's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).

E. Marketing programs.
   1. Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is 1st submitted to the Commission for review. If, within 30 days, the Commission does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
   2. Any financial institution or group of financial institutions that chooses to engage in its own marketing program may petition the Commission for a credit against future marketing fees.

NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

1. Section Affected — Rulemaking Action
   R14-4-139 — New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

   Constitutional Authority: Arizona Constitution Article XV §§ 4, 6, and 13

   Authorizing Statute: A.R.S. § 44-1821 and 44-1845

   Implementing Statute: A.R.S. §§ 44-1844 and 44-1845

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

   Name: Cheryl T. Farson, Associate General Counsel

   Address: Arizona Corporation Commission, Securities Division
   1300 West Washington, Third Floor
   Phoenix, Arizona 85007-2996

   Telephone: (602) 542-4242

   Fax: (602) 542-7470

4. An explanation of the rule, including the agency's reasons for initiating the rule:

   Proposed rule A.A.C. R14-4-139 (the "Rule") will provide an exemption from the registration requirements of A.R.S. §§ 44-1841 and 44-1842. The Rule will allow issuers to offer and sell up to $5 million of securities during any 12-month period to qualified purchasers, as defined in the Rule, provided certain conditions are met. Generally, qualified purchasers are accredited investors and individuals with substantial income and/or net worth.

   For an issuer to take advantage of the Rule, the sale of securities may not exceed $5 million in any 12-month period. A general announcement of the proposed offering may be made by any means, but must include a statement that sales will be made only to qualified purchasers. At least 5 days prior to a sale or receipt of a commitment to purchase, the issuer must meet disclosure requirements as set forth in A.A.C. R14-4-126(C)(2). Prospective purchasers may not be solicited by telephone unless the issuer has inquired and reasonably believes that the prospective purchaser is a qualified purchaser.

   Certain issuers are ineligible to use the Rule. The issuer may not be a development stage company whose annual net earnings for each of the 2 fiscal years prior to the offering, or whose average annual net earnings for the 5 fiscal years prior to the offering, are less than 5% of the aggregate amount of the offering; a "blind pool," as defined in A.R.S. § 44-1801(1); or an entity that has indicated that its business plan is to engage in a merger or acquisition with an unidentified entity or person. Additionally, the issuer, or any of its predecessors, affiliates, directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, or any underwriter of the securities cannot fall within the disqualification provisions of Section (R) of the Rule.

   Concurrent with the 1st to occur of the publication of a general announcement of the proposed offering or at the time of the initial offer of the securities, the issuer must file with the Commission a notice describing the business of the issuer and the terms of the transaction, a consent to service of process, a copy of the general announcement, and a fee. The Commission may also require the submission of any offering documents. The offering documents and any certificates representing the issued securities must contain a legend regarding the restrictions on the transferability and sale of the securities. Securities issued pursuant to the Rule cannot be resold without registration under the Arizona Securities Act or an exemption therefrom.

   If any offer, sale, or resale fails to comply with the conditions of the Rule, it may be an unregistered, unlawful offer or sale. Civil and administrative liabilities may attach under the Arizona Securities Act. In addition, the Director may revoke the availability of the Rule with respect to a particular issuer, seller, or transaction if the Director determines that there is a reasonable likelihood that the sale of the securities would work or tend to work a fraud or deceit upon the purchasers thereof. If the Director makes such a determination, the seller of the securities may request a hearing in accordance with the provisions of Article 11 of the Arizona Securities Act.

   The purpose of the Rule is to aid small businesses and to stimulate capital formation and promote economic growth. The Rule is patterned after an exemption adopted by the state of California for which the Securities and Exchange Commission ("SEC") has adopted a "wrap-around" exemption from registration on the federal level. The SEC has stated that it will adopt similar exemptions in connection with state registration exemptions patterned after the California exemption and the Commission anticipates that the SEC will adopt a wrap-around exemption in connection with this Rule.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
   The Rule is desirable to assist small businesses in capital formation in a manner that does not impose unnecessary expenses. The Rule is designed to benefit issuers by allowing them to seek capital from qualified purchasers in a significantly more cost-effective manner than with an offering of securities registered under Article 6 or Article 7 of the Arizona Securities Act. At the same time, since sales of securities are limited to qualified purchasers, the risk of substantial harm to the general investing public is limited. Moreover, the Commission retains antifraud jurisdiction over any offering under the Rule. Thus, the significant statewide interest in promoting capital formation for small businesses should be advanced without any significant loss of authority to the Commission.

6. **The preliminary summary of the economic, small business, and consumer impact:**
   Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
   Not applicable.

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date:	August 27, 1998
Time:	10 a.m.
Location:	Arizona Corporation Commission 1200 West Washington Avenue Phoenix, Arizona 85007
Nature:	Oral proceeding

   Any person may submit written comments to the person listed in question #3 prior to the oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will take final action with respect to the adoption of the proposed rule at an open meeting.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
   None.

10. **Incorporations by reference and their location in the rules:**
    None.

11. **The full text of the rules follows:**

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-139. Exempt public offerings for qualified investors; purchasers; definitions

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-139. Exempt public offerings for qualified investors; purchasers; definitions

A. As used in this Section, the following terms have the meaning indicated:

1. "Development stage company" means a company or issuer whose annual net earnings for each of the 2 fiscal years prior to an offering made pursuant to this Section, or whose average annual net earnings for the 5 fiscal years prior to the offering, are less than 5% of the aggregate amount of the offering.
2. "Net earnings" means after-tax earnings derived from normal operations, exclusive of extraordinary and non-recurring items, according to generally accepted accounting principles.
3. "Qualified purchaser" means:
   a. An "accredited investor" as defined in R14-4-126(B).
   b. A corporation, partnership, or other entity whose equity owners each individually meets the requirements of subsections (3)(a), (3)(c), or (3)(d).
   c. With respect to the offer and sale of 1 class of voting common stock of an issuer or of preferred stock of an issuer entitling the holder to at least the same voting rights as the issuer's 1 class of voting common stock, provided that the issuer has only 1 class of voting common stock outstanding upon consummation of the sale, a natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth in excess of $250,000, and had, during the immediately preceding tax year, gross income in excess of $100,000 and reasonably expects gross income in excess of $100,000 during the current tax year, or (ii) has a minimum net worth in excess of $500,000. The

amount of each natural person's investment shall not exceed 10% of the natural person's net worth, excluding home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.

d. Any other purchaser designated as qualified by rule of the Commission.

4. "Securities Act" shall mean the Securities Act of Arizona.

5. "SEC" shall mean the United States Securities and Exchange Commission.

B. Offers and sales of securities made by an issuer in compliance with this Section are exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842. The exemption from A.R.S. § 44-1842 is available for offers or sales of an issuer made only by the issuer's employees, officers, and directors who were not retained for the primary purpose of making offers or sales on behalf of the issuer. The exemption is not available for third parties or dealers.

C. This exemption is not available to a development stage company, a "blind pool" within the meaning of A.R.S. § 44-1801(1), an issuer whose business plan is to engage in a merger or acquisition with an unidentified entity or person, or an issuer that is excluded from the exemption pursuant to subsection (R). The exemption is not available for any transaction or chain of transactions that, while in technical compliance with this Section, is part of a plan or scheme to circumvent the registration provisions of the Securities Act.

D. Offers and sales of securities shall be made only to qualified purchasers or to persons the issuer reasonably believes, after inquiry, to be qualified purchasers.

E. The issuer must reasonably believe, after inquiry, that each purchaser is purchasing the security for the purchaser's own account and not with the view to, or for sale in connection with, a distribution of the security.

F. Securities acquired in a transaction under this Section shall have the status of securities acquired in an exempt transaction under A.R.S. § 44-1844 of the Securities Act and cannot be resold without registration under the Securities Act or an exemption therefrom.

G. In any 12-month period, the sum of all cash and other consideration to be received for the securities shall not exceed $5,000,000, less the aggregate offering price for all other securities sold in the same offering of securities, whether pursuant to this Section or another exemption.

H. A general announcement of the proposed offering may be made by any means, but shall include only the following information, unless additional information is specifically permitted by the Director:

1. The name, address, and telephone number of the issuer;

2. The name, a brief description, and price, if known, of any security to be issued;

3. A brief description of the issuer's business;

4. The type, number, and aggregate amount of securities being offered;

5. The name, address, and telephone number of the person to contact for additional information; and

6. A statement that discloses all of the following terms and conditions:

a. Sales will only be made to qualified purchasers.

b. No money or other consideration is being solicited or will be accepted in connection with the general announcement.

c. The securities are not registered with or approved by any state securities agency or the SEC and are offered and sold pursuant to an exemption from registration.

d. The general announcement does not constitute an offer to sell, nor a solicitation of an offer to buy, the securities described in the announcement. Such an offer can be made only by means of a prospectus, offering memorandum, subscription document, or other offering documents pursuant to A.A.C. R14-4-139.

I. Dissemination of the general announcement described in subsection (H) to persons who are not qualified purchasers shall not disqualify the issuer from claiming the exemption under this Section.

J. In connection with an offer made under this Section, the issuer may provide information in addition to the general announcement under subsection (H), if such information:

1. Is delivered through an electronic database that is restricted to persons who have been identified as qualified purchasers; or

2. Is delivered after the issuer reasonably believes that the prospective purchaser is a qualified purchaser.

K. No telephone solicitation shall be permitted unless prior to placing the call the issuer reasonably believes, after inquiry, that the prospective purchaser to be solicited is a qualified purchaser.

L. At least 5 business days before a sale of securities to, or a commitment to purchase securities is accepted from, a qualified purchaser, the issuer shall meet the disclosure requirements of R14-4-126(C)(2).

M. The issuer shall place a conspicuous legend on the cover page of any offering document, which states that the securities have not been registered under the Securities Act, are offered only to qualified purchasers as defined in A.A.C. R14-4-139, and have not been approved by the SEC or the Commission. The issuer shall place a conspicuous legend on the cover page of any offering document and on any certificate representing the securities, which sets forth the restrictions on the transferability and sale of the securities.

N. Concurrent with the publication of a general announcement of the proposed offering or at the time of the initial offer of the securities, whichever occurs 1st, the issuer shall file with the Commission a notice briefly describing the business of the issuer and the terms of the transaction, a consent to service of process, a copy of the general announcement, and the fee required by A.R.S. § 44-1861(G). Upon request of the Commission, the issuer may be required to submit a prospectus, offering memorandum, subscription document, or other offering documents or materials used in connection with the offer or sale of securities.

O. Failure to timely file the notice required in subsection (N) shall not, in and of itself, preclude reliance on the exemption afforded by this Section. If the Commission finds that such notice has not been timely filed with respect to more than 1 offering, the Commission may issue an order restricting the right to use exemptions under this Section.

P. The Director may deny or revoke the availability of this exemption if the Director determines that there is a reasonable likelihood that the sale of the securities would work or tend to work a fraud or deceit upon the purchasers. In the event the Director makes such a determination, the issuer may request a hearing in accordance with the provisions of Article 11 of the Securities Act by notifying the Commission within 10 days after notice of the Director's determination described in this subsection.

O. No action or inaction on the part of the Commission or Director with respect to any offer or sale of securities undertaken pursuant to this Section shall be deemed to be a waiver of any provision of this Section nor shall it be deemed to be a confirmation of the availability of this Section or the approval of any offering.

1. The exemption is not available to an issuer if it or any of its predecessors, affiliates, directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, or the underwriter:
   a. Has been convicted within the 10 years preceding the filing of the notice required by this Section, or at any time thereafter prior to the termination of the offering, of a felony or misdemeanor involving racketeering or a transaction in securities, or of which fraud is an essential element;
   b. Is subject to an order, judgment, or decree of any court of competent jurisdiction entered within 5 years of the date of filing of the notice required by this Section, temporarily, preliminarily, or permanently enjoining or restraining any conduct or practice in connection with the sale or purchase of securities, or involving fraud, deceit, or racketeering;
   c. Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within 5 years preceding the filing of the notice required by this Section, or at any time thereafter prior to the termination of the offering;
   d. Is subject to the reporting requirements of the Securities Exchange Act of 1934 and has not filed all required reports during the 12 calendar months preceding the filing of the notice required by this Section; or
   e. Is subject to an order of any state or federal agency denying or revoking registration or licensure as a broker or dealer in securities or as an investment adviser or investment adviser representative, or is subject to an order denying or revoking membership in a national securities association registered under the Securities Exchange Act of 1934, or has been suspended for a period exceeding 6 months or expelled from membership in a national securities exchange registered under the Securities Exchange Act of 1934.
2. The Commission, in the Commission's discretion, may waive any disqualification prescribed by this subsection.
3. A disqualification prescribed by this subsection ceases to exist if:
   a. The basis for the disqualification has been removed by the jurisdiction creating it;
   b. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification; or
   c. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**

R18-4-101	Amend
R18-4-104	Amend
R18-4-120	Amend
R18-4-122	Amend
Article 2.	Amend
R18-4-206	Amend
R18-4-212	Amend
R18-4-216	Amend
R18-4-219	Amend
R18-4-224	New Section
R18-4-225	New Section
R18-4-226	New Section
Article 4.	Amend
R18-4-401	Amend
R18-4-402	Amend
R18-4-404	Amend
R18-4-405	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 49-202, 49-351, 49-353, Laws 1998, Ch. 298, § 6 (HB 2231)

Implementing statutes: Laws 1998, Ch. 298, § 6 (HB 2231)

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Margaret L. McClelland or Martha L. Seaman

Address: Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

Telephone: (602) 207-222

Facsimile: (602) 207-2251

4. **An explanation of the rule, including the agency's reasons for initiating the rule.**

The purpose of this rulemaking is to implement a monitoring assistance program authorized in Laws 1998, Ch. 298, § 6 (HB 2231), passed during the 1998 legislative session. This program will provide for the collection, transportation and analysis of certain baseline samples from public water systems in a frequency sufficient to keep the systems in compliance with the federal Safe Drinking Water Act requirements. A.R.S. § 49-360, as amended by HB 2231, requires that the Arizona Department of Environmental Quality (ADEQ) contract with 1 or more private parties or state-wide nonprofit organizations representing water systems to implement the monitoring assistance program, subject to available funding. The rules will also establish fees to support the program.

A. Background for These Proposed Rules

During the 1997 legislative session, the Arizona Legislature first passed § 49-360 which authorized the ADEQ to establish a centralized monitoring program to assist public water systems in complying with the monitoring requirements under the Federal Safe Drinking Water Act (SDWA). The Department proposed and adopted rules which were heard before the Governor's Regulatory Review Council (Council) on April 7, 1998. The Council tabled action on the rulemaking for up to 90 days to allow ADEQ to have further dialogue with interested parties regarding issues raised at the Council meeting. While the rules were tabled, the Arizona legislature again considered the centralized monitoring program and ADEQ began dialogue with stakeholders at the legislature. As a result, the legislature passed HB 2231, which amended A.R.S. § 49-360, requiring ADEQ to establish the monitoring assistance program through rulemaking. The rulemaking which had been tabled by GRRC was withdrawn and the current rulemaking proposed.

The primary purpose of the SDWA is to ensure that drinking water supplied to consumers by pubic water systems is safe to drink and does not exceed prescribed maximum contaminant levels (MCLs). Water suppliers are required to conduct monitoring every 3 years to verify that MCLs are not exceeded and to report the results to the ADEQ. If there are any MCL violations, the water supplier is required to provide public notification to persons who are served by the public water systems and to take necessary actions to eliminate the violations.

Drinking water monitoring requirements have been in existence since at least 1962. Beginning with the passage of the 1986 Drinking Water Act Amendments, the rate of change to the monitoring requirements has accelerated. As a result, the current monitoring requirements are extremely complex, difficult to understand and compliance is expensive.

Compliance monitoring rates for inorganic chemicals, VOCs and SOCS are extremely low. ADEQ has had a concerted technical assistance program, as well as an aggressive enforcement program. As a result of the lack of compliance monitoring, the water quality regarding these contaminants is unknown for most public water systems, particularly small water systems.

Some water systems spent considerable sums of money on monitoring and found themselves still out of compliance. These systems had not taken the appropriate number of samples at the appropriate locations in the appropriate timeframes, or failed to instruct the laboratories to run the appropriate analyses. Some results were rejected by ADEQ for reasons associated with the analytical methods used by the laboratories.

These problems combined to produce a groundswell of dissension in the drinking water industry that reached a crescendo in 1996. In response, a study team led by members of the Arizona Legislature, was formed and held a series of legislative hearings around the state during the summer of 1996 to hear about the problems and concerns facing small water systems. It produced a series of eleven recommendations which comprised the bulk of the content of SB 1252 passed during the 1997 legislative session, and HB 2231 passed during the 1998 legislative session.

HB 2231 also established the Monitoring Assistance Fund, which will consist of fees collected from participating public water systems. The fees are to be used to pay the monitoring assistance program contractors, and the environmental laboratories that perform the analyses. In addition, a portion of the fees are applied to the administrative costs incurred by ADEQ.

B. Specific Section-By-Section Explanation of This Proposal

R18-4-101

This is the definition section for rules in Chapter 4, Safe Drinking Water. In this Section, ADEQ proposes new definitions for the monitoring assistance program for the terms "baseline monitoring", "contractor", "monitoring assistance program", "meter", "meter weight" and "unit fee".

To prevent duplicate reporting, ADEQ proposes to amend R18-4-104(A) and (I) to clarify that the water supplier is not required to report the results of any analysis taken under the monitoring assistance program that results in non-detection. ADEQ proposes to amend Subsection (J) to clarify that a water supplier is required to report the failure to comply with monitoring requirements

for analyses taken under the monitoring assistance program requirements. Additionally, ADEQ proposes to amend Subsection (J) to exclude analyses taken under the monitoring assistance program from reporting requirements for confirmation samples required under this subsection.

ADEQ proposes to amend R18-4-120 to clarify that monitoring conducted by the contractor shall not be used by a public water system for compliance purposes, with the exception of analyses covered by the monitoring assistance program.

ADEQ proposes to amend R18-4-122 to add subsection (B) which provides that if the water supplier denies, restricts, limits or obstructs the contractor's access to a facility, the public water system shall be responsible for the resulting noncompliance. The covered contaminants may be collected only by the contractor or ADEQ.

ADEQ proposes to amend R18-4-206 to establish that the contractor may take and composite samples and take confirmation samples ADEQ approval, for listed inorganic chemicals, on behalf of the CWS or NTNCWS under the monitoring assistance program. This proposed Section will also establish that the water supplier shall be responsible for the costs for resampling and analyses taken under the monitoring assistance program.

ADEQ proposes to amend R18-4-212,to establish that the contractor may composite samples taken on behalf of the CWS or NTNCWS under the monitoring assistance program. It also provides for ADEQ to reduce the frequency of monitoring and for ADEQ to grant VOC monitoring waivers and update a water system's vulnerability assessment, on the Department's own initiative.

ADEQ proposes to amend R18-4-216 to provide that the contractor may conduct monitoring on behalf of the CWS or NTNCWS for listed synthetic organic chemicals. ADEQ may grant SOC monitoring waivers on its own initiative

ADEQ proposes to amend R18-4-219 to provide for compositing samples under the monitoring assistance program.

The proposed Section R18-4-224 will establish the requirements for the monitoring assistance program. It will establish who shall or may participate, for what chemicals monitoring shall be conducted and responsibilities of the public water system under the monitoring assistance program.

ADEQ proposes R18-4-225 to establish the fee requirements for the public water system for costs incurred under the monitoring assistance program. For systems that serve ≥ 100 service connections, subsection (B) will establish the annual unit fee at $3.50. For systems with fewer than 100 service connections, ADEQ has provided 2 options in subsection (C) which the ADEQ is considering for inclusion in the rule. One option for subsection (C) is included in each of the 2 Sections R18-4-225 included in the rule text. One option provides for a flat fee of $350 to be paid annually. The other option provides for payment of an annual unit fee of $3.50, as the systems with ≥ 100 service connections will pay. ADEQ will seek input on these options during the public comment period and will determine what the final language for that subsection will be prior to filing the proposed rules with the Governor's Regulatory Review Council. Subsections (B) and (C) each contain provisions for an increase in the fee based on the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.

It will provide that a public water system which serves more than 10,000 persons shall pay its total annual monitoring fees prior to commencement of monitoring by the Department and must participate for the entire compliance period.

ADEQ proposes R18-4-226 to establish the requirements for collection of fees by the public water system and payment of those fees to ADEQ. It will provide for mailing of the invoice by ADEQ and for requirements for refunds, billing corrections, verification by ADEQ the number and size of meters or number of service connections and the provision that ADEQ shall not waive fees.

ADEQ proposes to amend R18-4-401 to establish that the contractor may conduct compliance monitoring for a CWS and NTNCWS for sulfate and apply for waivers under the monitoring assistance program. ADEQ, on its own initiative, may grant waivers of sulfate.

ADEQ proposes to amend R18-4-402 to establish that the contractor may conduct monitoring for sodium on behalf of the CWS.

ADEQ proposes to amend R18-4-404 to provide that, under the monitoring assistance program, contractor may conduct monitoring on behalf of the CWS or NTNCWS for the for unregulated volatile organic chemicals, apply for waivers on behalf of a PWS, and that ADEQ may, on its own initiative, grant waivers.

ADEQ proposes to amend R18-4-405 to provide that, under the monitoring assistance program, the contractor may conduct monitoring on behalf of the CWS or NTNCWS for listed unregulated synthetic organic chemicals, and that ADEQ may, on its own initiative, grant waivers.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

   Under authority of § 49-360 in HB 2231, the Arizona Department of Environmental Quality (ADEQ) will establish the monitoring assistance program to assist public water systems (PWSs) in complying with monitoring requirements under the Federal Safe Drinking Water Act. The Department must contract with 1 or more private sector entities to implement the program, which is mandatory for all small PWSs (those serving 10,000 people or less), and is optional for those that serve more than 10,000.

There are a total of 1,764 PWSs in Arizona, 979 (55%) of which are to be governed by this rule. All 979 systems serve fewer than 10,000 people, and are either community water systems (CWSs) or non-transient, non-community water systems (NTNCWSs). CWSs are those that deliver water to at least 25 people or 15 service connections year round; and NTNCWSs serve an average of 25 persons (or 15 service connections) or more for at least 6 months a year.

The Monitoring Assistance Program

The monitoring assistance program provides for a chemical monitoring process which consists of the collection, transportation and analytical testing of baseline samples from all participating PWSs. Under the program, the contractors will collect and transport samples to monitor a total of 98 regulated and unregulated contaminants under the following categories: volatile organic chemicals (VOCs), synthetic organic chemicals (SOCs) and inorganic chemicals (IOCs) except for asbestos, copper, lead, nitrates and nitrites. All samples that are tested and discovered to exceed maximum contaminant levels (MCLs) will be subjected to required increased sampling and public notification requirements by the PWS owner, as stipulated by existing rules.

To implement the program, the Department will enter into a contract with 1 or more private sector contractors to collect drinking water samples and transport these to laboratories. Analytical testing will be carried out by laboratories certified by the Arizona Department of Health Services (ADHS) or the US Environmental Protection Agency (EPA), and that meet specific criteria for laboratory qualifications and performance established by ADEQ. Chemicals not covered by the rule (the remaining IOCs, radiochemicals and other contaminants including total coliform) will still be monitored as required by existing State rules (Title 18 AAC, Chapter 4, Article 2), but they will continue to be the responsibility of the PWS.

The Department also anticipates contracting with a private sector entity to carry out the following services: 1) assist participating PWS to apply and qualify for waivers; and 2) provide on-site technical assistance necessary to all PWS in need of monitoring assistance with any portion of the Federal Safe Drinking Water Act.

NON-COMPLIANCE

Under current State law, sampling and testing to ensure safe drinking water for Arizona's residents is a responsibility of the PWS. To achieve compliance under existing State rules, all PWSs are supposed to have:

a) monitored for all contaminants in the required frequency;

b) monitored all their sampling locations or points of entry (POEs); and

c) carried out the monitoring during their assigned monitoring year.

Based on these requirements, there has tended to be a high noncompliance rate among small PWSs in Arizona. Indicative of this noncompliance is PWS performance pertaining to SOCs. ADEQ records show that only 26% of PWSs at that time fully complied during the 1993-95 monitoring period (939 was the total in 1995, as differentiated from the FYE 1997 total of 979). Another 43% were in partial compliance (that is, they monitored for fewer than the required number of SOCs); and 31% did not monitor at all. Thus, a fairly large majority (74%) of small systems have exhibited monitoring deficiencies of one kind or another.

This level of monitoring noncompliance makes it extremely difficult for the Department to assure the public that its drinking water supply is safe. Certainly, for those residents whose water comes from sources that have not been sampled and tested, questions about public health and safety are raised. Thus, ADEQ will implement the monitoring assistance program to ensure that the required monitoring is performed and public health is protected.

THE COST OF COMPLIANCE

To pay for the program, the Department is authorized to assess fees from all participating PWS. Fees will be assessed annually to cover the 1st monitoring cycle January 1, 1999 to December 31, 2001. Collection will commence as soon as these rules are approved. The fee will be standardized according to the resident's or customer's number of service connections and meter size. The base rate will consist of an annual unit fee of $3.50 per year for a 3/4-inch service connection. PWS with fewer than 100 service connections will pay either an annual unit fee of $3.50 or a flat fee of $350 per year, to be determined after the comment period is held.

The program will be implemented subject to available funding. The fees collected by the Department will be used to pay the contractors for sampling, analytical testing, waivers and monitoring technical assistance. If detects or maximum contaminant levels (MCLs) occur, the relevant PWS will be required to pay for the increased sampling frequency and other corrective action measures.

The aim of the monitoring assistance program, then, is to assist PWS to achieve monitoring compliance for the covered contaminants. In cases where MCL violations occur, the relevant PWS will be subjected to public notice requirements, and ADEQ will take the necessary steps for the protection of public health.

DISTRIBUTION OF COSTS

The cost allocation method is as follows: each PWS determines the number and size of all of its water meters and/or service connections by June 30 of each year. The PWS owner or operator transmits this information to ADEQ by October 1 of the same year. ADEQ prepares an invoice based on this information and sends out a bill to the PWS owner/operator charging a unit fee for each size of service connection and/or meter. Participating PWS will be billed annually.

The monitoring assistance program budget for the 1st monitoring cycle will be developed as soon as the contractual agreements between ADEQ and the contractors are finalized. Budget projections will reflect the contractors' costs based on the business plan for implementing the program. An important component of the contractor's business plan will consist of the costs for transportation and analytical testing of water samples. For the analytical testing component of the program, the contractors will negotiate with ADHS-licensed or EPA-approved private laboratories that meet the qualifications and performance criteria established by ADEQ, before finalizing the contract with ADEQ. Contractor negotiations are expected to focus on details of a sampling plan for all 979 small PWS, and will exclude all costs for required re-sampling.

MONITORING ASSISTANCE PROGRAM SAMPLING PLAN

A detailed monitoring assistance program sampling plan has yet to be developed by the contractors in conjunction with ADEQ. The sampling plan is expected to be crafted according to specific variables that will dictate costs. Among the cost variables are:

a) the number of sampling locations or points of entry (POEs);

b) the required sampling frequency;

c) the water source (whether surface or groundwater);

d) the frequency of allowed compositing;

e) the EPA-approved testing method;

f) the number of waivers granted; and

g) transportation and shipping costs.

MONITORING ASSISTANCE PROGRAM BENEFITS

The benefits of the monitoring assistance program are anticipated to result in universal compliance for contaminants covered under this program by all small PWS in the State, which will be an improvement from the currently high noncompliance rate. Private sector contactors and the laboratories with which they sub-contract, are also expected to profit from the program. Public health benefits associated with health and safety derive from delivery of safe drinking water.

ADEQ believes that the benefits of the monitoring assistance program will outweigh its costs to the degree that safe drinking water is critical to general public health, and contributes in a significant way to the prevention of many diseases. All the contaminants that are required to be tested for, are either known carcinogens or have been known to cause or be associated with many other diseases, including kidney and liver diseases. There are documented cases of MCL exceedances in Arizona that have posed a clear threat to public health.

Although pathogens in inadequately treated drinking water are still the greatest public health concern related to drinking water, increased industrialization, the widespread use of industrial and agricultural chemicals, and the disposal of large volumes of industrial wastes require the protection of drinking water from contamination with chemical agents. Over 60,000 chemicals are being used nationwide by industry and agriculture which can pollute both surface and groundwater sources of drinking water. The quality of drinking water can be compromised by a number of processes which include leakage from underground storage tanks, agricultural run-off, improper industrial practices, mining operations, the subsurface injection of waste chemicals and brines, and corrosive water.[1] When drinking water quality is compromised, ADEQ intends that the monitoring assistance program will be used to document any existing problems and to take the necessary steps to protect public health.

ARS § 41-1055 Requirements for an EIS

B(2) PERSONS DIRECTLY AFFECTED BY THE RULE

a) Arizona Department of Environmental Quality --

ADEQ, as the implementing agency, is charged with administering the contract(s) that will implement the program. The Department will also take charge of the billing and collection of fees, as well as the management of the Monitoring Assistance Fund.

b) Arizona Department of Health Services (ADHS) Laboratory Licensure and State Laboratory --

Laboratory Licensure certifies private commercial laboratories, both in and outside Arizona. Certification, for purposes of this program, means drinking water analytical testing certification.

c) Arizona Corporation Commission (ACC) -- The ACC regulates all PWS that are classified as utilities and corporations, except trusts, cooperatives, partnerships and sole proprietorships. If, as a result of the monitoring assistance program, the PWS will increase the fees they collect from their residents and customers in an amount that exceeds 10% of current fees, the PWS will have to seek approval from ACC for any surcharge increase. If the PWS will decrease the fees they charge their customers, they will apply to ACC for the appropriate rate adjustment.

d) Public Water Systems (PWSs) -- Regulated entities who will be governed by this rule are all small PWSs (serving 10,000 or

1. W. Coniglio, P.Berger, & J. Cotruvo, "Water Pollution and Chemical Contamination in Drinking Water", Principles and Practice of Environmental Medicine ed. by A. Tarcher, M.D., New York: Plenum Publishing, 1992.

fewer people), as well as PWSs serving more than 10,000 that choose to participate in the program. All participating PWSs will be required to remit to ADEQ the program fees established in this rule.

e) Private Laboratories -- Private Laboratories that are ADHS-certified and meet laboratory qualifications and performance criteria established by ADEQ, and enter into a contractual agreement with the ADEQ contractors, will carry out analytical testing of samples collected by the contractors.

f) Private Sector Suppliers -- Businesses in the various industries that will be directly and indirectly affected by the monitoring assistance program monitoring process (manufacturers and distributors of bottles and other supplies used for sampling and testing, transportation companies, businesses supplying vehicles, computers, etc.), will benefit from new business that will accompany the required monitoring.

g) Residents and Water Consumers of the State -- Arizona residents and water consumers who are served by the participating PWS, will benefit from a greater assurance of the safety of their drinking water supply.

g) Taxpayers -- The taxpaying public that supports public entities like municipalities and school districts will provide a partial subsidy for this program through the use of funds for that portion of the program that will cover the costs of monitoring PWS owned and operated by these entities.

B(3) COST-BENEFIT ANALYSIS

I. COSTS AND BENEFITS TO STATE AGENCIES

A. AZ Department of Environmental Quality

The Department will administer the contract(s) to implement the program. The Department will also prepare the fee invoices from population and service connections data submitted by participating PWS, collect the fees and pay for program costs subject to available funding. To defray the costs of administration, ADEQ will retain 10% of all revenues from collected fees.

Program expenditures will be heavily influenced by the cost variables indicated above, and on what the contractors will bring to the negotiating table. The Department will look to the contractors' ability to develop a sampling plan that can accomplish all the required monitoring within the limits of the established fees. The Department also expects that the contractors will have the expertise necessary to get the job done right and on schedule, and to be able to fulfill all the legal and technical requirements of the Safe Drinking Water Act with respect to the monitoring of covered contaminants.

Through the monitoring assistance program, ADEQ will also acquire statewide monitoring data needed for implementing Permanent Monitoring Relief (PMR) which, when enacted at the Federal level, will be adopted by the State. In 1997, EPA issued guidelines for states to follow in proposing alternative monitoring requirements for chemical contaminants. Congress recognized that as a state gains a better understanding of the contamination sources that may affect the quality of a drinking water supply, the State would be in an appropriate position to tailor the monitoring requirements for the system while continuing to provide effective public health protection. Source water assessment programs are designed to generate the information that will enable states to offer alternative monitoring to PWS in appropriate circumstances. Alternative monitoring must ensure that public health is protected from drinking water contamination, that a state program will apply on a contaminant-by-contaminant basis and that a PWS must show the state that the contaminant is not present in the drinking water supply (or, if present, is reliably and consistently below the maximum contaminant level). ADEQ anticipates PMR to be in place at the federal level after August 6, 1999.

B. Arizona Department of Health Services (ADHS)

The ADHS Laboratory Licensure certifies commercial laboratories to ensure that they are qualified and equipped to conduct analytical testing for drinking water and all other environmental compliance tests. To issue a certification, ADHS charges the laboratory an annual non-refundable application fee which is based on the number of licensed parameters (ranging from $1,000 for 1 to 9 parameters, to $1,400 for more than 17 parameters). In addition to the licensure application fee, applicants pay for the licensure of approved methods and associated instrumentation according to a fee schedule that is set in ADHS rules.

There may be some increase in ADHS certification and laboratory activities as a result of this rule, but no incremental costs or benefits to the agency are anticipated.

C. Arizona Corporation Commission (ACC)

The ACC regulates all privately-owned PWSs classified as utilities and corporations. ACC staff may see more applications coming into the agency for water utility surcharges, but there will be no incremental costs and benefits to the agency. Any costs the agency may incur as a result of this program will come mainly from granting authority to PWSs under its jurisdiction to recover the costs of the monitoring assistance program. The ACC has developed a form to facilitate this process. At present, there are 410 PWSs (41% of the total) which are regulated by ACC.

D. State agencies that are regulated by ADEQ -- State agencies that are small PWS owners/operators such as the AZ Department of Corrections and the AZ Department of Transportation, will continue to be monitored but are exempt from the payment of fees and will not be affected by this rule.

II. COSTS AND BENEFITS TO POLITICAL SUBDIVISIONS OF THE STATE

A. Municipalities, counties and quasi-government entities including school districts, Domestic Water Improvement Districts

(DWID's) and universities that are small PWS, are required to participate in the program. Over 200 small PWS fall under this category.

Part of the benefits that small PWS will realize from this program, whether they are public or privately-owned, is that they will be relieved of the administrative burdens of sampling and testing for the covered contaminants. Many system owners have complained in the past that existing monitoring rules are too complex, confusing, and difficult to follow. This rule will enable ADEQ contractors to collect and transport the samples, and let private laboratories carry out the testing.

III. COSTS AND BENEFITS TO PRIVATE BUSINESSES, INCLUDING SMALL BUSINESSES

A) ADEQ Contractors -- ADEQ will contract with 1 or more private sector entities or statewide non-profit organizations representing water systems to implement the monitoring assistance program. The contractors will prepare a sampling plan, in conjunction with ADEQ, intended to complete all required monitoring during the 1st monitoring cycle.

B) Contract Laboratories -- Private laboratories that meet all qualifications and performance criteria established by ADEQ, and that contract with ADEQ contractors, will provide and be paid for analytical testing services. They will be required to submit test results to ADEQ, the ADEQ contractors and the PWS.

Analytical testing for the monitoring assistance program will constitute a business opportunity for the contracted laboratories. Their incremental business opportunity is represented by work that will be created to achieve compliance monitoring for all PWSs who have exhibited monitoring deficiencies in the last 2 monitoring cycles. Universal compliance will constitute a significant increase, from current levels, in the number of samples collected and tested. It is assumed that laboratory contract prices will be reflected in the ADEQ contractors' negotiated contract fees and will contain a profit margin commensurate with the contractors' and laboratory owners' desired rate of return.

B) Privately-owned Public Water Systems (PWSs) -- Private PWSs are composed of for-profit companies or non-profit organizations. ADEQ records indicate that private PWSs constitute more than 3/4 (78.6%) of Arizona PWSs, and only 21.4% are made up of municipalities or quasi-government entities.

Analytical testing costs for a set of samples from any 1 PWS could vary considerably, a principal variable being its number of points of entry or POEs. Sampling requirements for groundwater sources will apply in the vast majority of cases, since 98% of PWSs have groundwater sources exclusively. A small minority of PWSs with surface water sources will require different sampling frequencies during the 3-year monitoring cycle: an annual sample for VOCs and IOCs. The costs for surface water sampling and monitoring will therefore be greater. Small PWSs serving more than 3,300 people will also have greater SOC sampling frequencies, since they have to monitor during 2 non-consecutive quarters every 3 years.

Costs for Compliance

The fee formula will be based on the total number of service connections reported by PWS to ADEQ, adjusted for meter size. However, all PWS that have fewer than 100 service connections will be billed either a flat fee of $350 per annum or an annual unit fee of $3.50, depending on the option chosen by ADEQ. The table below shows that the base rate of $3.50 will apply to customers who have a 3/4 inch pipe (typical of residential areas). If the customer is a commercial or industrial establishment with a meter size of 8" or greater, its annual bill will be $186.66. The fees are based on data derived from the Department's service connections survey, as indicated in the table.

ADEQ DRINKING WATER SECTION:

SERVICE CONNECTIONS INVENTORY SURVEY

METER SIZE:	NUMBER (#):	PERCENTAGE (%):	METER WEIGHT FACTOR:	AVERAGE UNIT FEE:
≤ 0.75"	183,275	79.41%	1.00	$3.50
1"	9,509	4.12%	1.67	$5.85
1.5"	1,063	0.46%	3.33	$11.66
2"	2,717	1.18%	5.33	$18.66
3"	393	0.17%	10.00	$35.00
4"	201	0.09%	16.67	$58.35
6"	95	0.04%	33.33	$116.66
≥ 8"	555	0.24%	53.33	$186.66
Non-Reporting Estimate:	32,984	14.29%		
TOTAL:	**230,792**	**100.00%**		

The table shows that almost 80% of all reported service connections have a meter size of less than or equal to 3/4 of an inch. Thus, the vast majority of customers will pay the average minimum fee of $3.50 per service connection per year. The meter weight factor is a multiplier based on the pipe diameter size, using as the base reference point the most commonly occurring meter size used for residential households (3/4 inch) which has a multiplier of 1.00. The 3/4 inch pipe has a maximum flow rate of 30 gallons per minute. A pipe of 1" in diameter has a maximum flow rate of 0.67 more than a 3/4 inch pipe; thus it has a meter weight of 1.67, and so on. This is a standard utility design method obtained from the Arizona Corporation Commission and verified with the American Waterworks Association.

C) Contingency Costs and Benefits

1. Public Notification -- All non-monitoring PWS are required to give public notice. Furthermore, if an MCL exceedance is detected from the testing of a sample, the public served by the relevant PWS has to be notified within 48 hours of completed test results. This is a contingency cost required by the existing rule. Local newspapers and other publications which contain public notices will benefit from new business which will stem mainly from PWS that are found to have MCL violations.

The costs for public notification vary with each newspaper, number of words contained in the public notice, day of publication and circulation size. The benefits of public notification derive from alerting the relevant public to possible questions regarding the safety of their drinking water supply. This will enable residents to seek alternative sources of drinking water until the problem is verified and resolved. The consuming public will thus avoid the adverse consequences of drinking unsafe water.

2. Compositing -- Compositing, which is allowed only for SOC samples, may occur when certain conditions are met. Compositing can cut costs significantly because it allows up to 5 samples to be tested as a single sample. Savings could be as much as 80% for a group of samples if the appropriate conditions apply. For systems serving fewer than 3,300 people, compositing between systems may be done; for those serving more than 3,300, compositing within the system may be carried out.

3. Waivers -- Waivers are designed to reduce sampling frequency and therefore, the costs of monitoring, when the risks of contamination are determined by ADEQ to be low. The Department may grant a waiver if ADEQ program staff determine that a system is unlikely to become contaminated, or that any contamination will remain reliably and consistently below the MCLs during the waiver period. Thus, significant savings could also occur from a waiver program.

The cost of public notification in the event of a detect or MCL violation will be borne by the relevant PWS owner or operator. But expenditures for repeat sampling for systems found to be in violation, as well as the savings benefits stemming from all composited samples and waivers will be allocated to all participating systems.

IV. COSTS AND BENEFITS TO RESIDENTS AND CONSUMERS

Residents and consumers of participating PWS are expected to be affected in differential ways, depending on whether or not the PWS has done any monitoring in the past, and on whether the PWS chooses to pass on the monitoring costs to its customers. The biggest incremental impact will be on those consumers whose water providers have not monitored at all, and who will now commence charging monitoring fees.

If the PWS has monitored in the past, their residents and consumers will be affected by how much of the proposed monitoring

fees differ from what PWS charged in the past. Although customers' costs are fixed by the fee schedule, contractors' costs will be highly dependent on whether their sampling plan will be able to accomplish monitoring on schedule and within the monetary limits established by the fees.

ADEQ believes that with implementation of the monitoring assistance program, the entire population of Arizona served by small drinking water systems will be assured of current information about their water quality.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Margaret L. McClelland or Martha L. Seaman

Address: Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

Telephone: (602) 207-2222

Fax: (602) 207-2251

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

ADEQ will hold an oral proceeding to receive public comments in accordance with A.R.S. § 41-1023. The time, place, and location of the hearing are listed below:

PHOENIX

August 24, 1998

1 p.m.

Arizona Department of Environmental Quality
3033 North Central Avenue, Room 1710
Phoenix, Arizona 85012

ADEQ will accept oral or written comments which are received by 5 p.m. on August 28, 1998, or postmarked not later than that date.

ADEQ is committed to complying with the Americans With Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADEQ at least 72 hours before the hearing.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

10. **Incorporations by reference and their location in the rules:**

None.

11. **The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER

ARTICLE 1. DEFINITIONS

Section
R18-4-101. Definitions
R18-4-104. Reporting Requirements
R18-4-120. Monitoring and Sampling by the Department
R18-4-122. Entry and Inspection of Public and Semipublic Water Systems

ARTICLE 2. MAXIMUM CONTAMINANT LEVELS MONITORING REQUIREMENTS; MONITORING ASSISTANCE PROGRAM

R18-4-206. Monitoring Requirements for Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cyanide, Fluoride, Mercury, Nickel, Selenium and Thallium
R18-4-212. Volatile Organic Chemicals; Monitoring Requirements
R18-4-213. Vinyl Chloride; Monitoring Requirements
R18-4-216. Synthetic Organic Chemicals; Monitoring Requirements
R18-4-219. Sample Compositing
R18-4-224. The Monitoring Assistance Program
R18-4-225. Fees for the Monitoring Assistance Program
R18-4-226. Collection and Payment of Fees

ARTICLE 4. SPECIAL MONITORING REQUIREMENTS

R18-4-401. Special Monitoring Requirements for Sulfate
R18-4-402. Special Monitoring for Sodium
R18-4-404. Special Monitoring for Unregulated Volatile Organic Chemicals
R18-4-405. Special Monitoring for Unregulated Synthetic Organic Chemicals

ARTICLE 1. GENERAL REQUIREMENTS

R18-4-101. Definitions

In this Chapter the following terms mean:

1. No change
2. No change
3. No change
4. No change
5. No change
6. "Baseline monitoring" means the routine monitoring of contaminants covered under the monitoring assistance program for the purpose of determining compliance with the contaminants listed in Article 2, not including repeat or resampling necessary for compliance after detection of a contaminant or an MCL violation.

~~6~~7. No change
~~7~~8. No change
~~8~~9. No change
~~9~~10. No change
~~10~~11.No change
~~11~~12.No change
~~12~~13.No change
~~13~~14.No change
~~14~~15.No change

16. "Contractor" means the private party, or statewide non-profit organization representing water systems, that the Department contracts with to implement the monitoring assistance program in accordance with the requirements of A.R.S. § 49-360(B).

~~15~~17.No change
~~16~~18.No change
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~~54~~56.No change

57. "Meter" means a device that measures the volume of water that has passed through it.
58. "Meter weight" means the number of gallons per minute (gpm) that flows through a meter divided by 30.

~~55~~59.No change
~~56~~60.No change

61. "Monitoring assistance program" means the program established pursuant to A.R.S. § 49-360, under which the contractor provides for collection, transportation and analysis of samples from a public water system in accordance with the provisions of R18-4-224 through R18-4-226.

~~57~~62.No change
~~58~~63.No change
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~~96~~101.No change
~~97~~102.No change

103. "Unit fee" means the amount charged to a public water system under the monitoring assistance program for a meter weight of 1 in accordance with R18-4-225.

~~98~~104.No change
~~99~~105.No change
~~100~~106.No change
~~101~~107.No change
~~102~~108.No change
~~103~~109.No change

~~104~~110.No change

R18-4-104. Reporting Requirements

A. Routine monitoring: Except as specified in this subsection, a water supplier shall report the result of any test measurement or analysis required by Article 2, except that the contractor shall report for an analysis taken under the monitoring assistance program, to the Department within the 1st 10 days following the month that the water supplier receives the analytical result or the 1st 10 days following the end of an applicable monitoring period prescribed by Article 2, whichever is less.

1. Fecal coliform / *E coli:* If any routine or repeat sample for total coliform is positive, the water supplier shall have the total coliform-positive sample analyzed to determine if fecal coliforms are present, except that the water supplier may test for E. coli instead of fecal coliforms. If fecal coliforms or *E. coli* are present in a total coliform-positive sample, a water supplier shall report the positive results to the Department, by telephone or facsimile, as soon as possible but no later than 24 hours after receiving notice of the fecal coliform-positive or *E. coli*-positive test result.
2. Nitrate: If monitoring results indicate an exceedance of the MCL for nitrate in a routine sample, a water supplier is required by R18-4-208(I) to take a confirmation sample within 24 hours of receipt of the analytical results. A water supplier shall report the MCL exceedance to the Department by telephone or facsimile, within 24 hours of receipt of the analytical results.
3. Total trihalomethanes: A water supplier shall report the arithmetic average of analytical results for total trihalomethanes within 30 days of receipt of the last analytical results of the previous quarter.

B. No change
C. No change
D. No change
E. No change
F. No change
G. No change
H. No change
I. No change
J. No change

K. Special monitoring: A water supplier that conducts special monitoring prescribed in Article 4, except for an analysis taken under the monitoring assistance program in Article 2, shall report the following information to the Department:

1. A water supplier that monitors for sulfate pursuant to R18-4-401 shall report the sulfate monitoring results within 30 days of receipt of the analytical results.
2. A water supplier that monitors for sodium pursuant to R18-4-402 shall report the sodium monitoring results in the 1st 10 days of the month after the month that the analytical results were received. A water supplier shall notify the Arizona Department of Health Services [ADHS] and the local county health department of the sodium monitoring results by direct mail within 3 months of receipt of the analytical results. The water supplier shall send a copy of each notice provided to ADHS and the local county health department to the Department within 10 days of issuance.
3. A water supplier that monitors for unregulated VOCs pursuant to R18-4-404 shall report the analytical results to the Department within 30 days of receipt of the analytical results.
4. A water supplier that monitors for unregulated SOCs pursuant to R18-4-405 shall report the analytical results to the Department within 30 days of receipt of the analytical results.

L. Failure to comply with monitoring requirements: A water supplier shall report the failure to comply with any monitoring requirement prescribed in this Chapter, including an analysis covered by the monitoring assistance program in Chapter 2, within 48 hours except that a public water system that fails to comply with a total coliform monitoring requirement shall report the monitoring violation to the Department within 10 days of discovery.

M. No change
N. No change
O. No change

P. Confirmation sample results: A water supplier shall report the analytical results of any confirmation sample required by the Department, except a confirmation sample obtained by the a contractor under the monitoring assistance program within 24 hours of receipt of the analytical results.

Q. No change
R. No change
S. No change
T. No change
U. No change

R18-4-120. Monitoring and Sampling by the Department

A. The Department~~, as it considers necessary for the protection of public health,~~ may take samples from a public water system. ~~Upon completion of analytical testing, a copy of the analytical results shall be forwarded to the water supplier~~ If the Department takes a sample at a public water system, the Department shall forward a copy of the analytical results to the water supplier.

B. If a public water system fails to ~~conduct required monitoring~~ monitor, the Department may ~~conduct monitoring~~ monitor to determine ~~the system's~~ compliance with ~~maximum contaminant levels~~ MCLs. ~~Any monitoring~~ Monitoring ~~conducted~~ by the Department shall not be used by ~~a~~ the public water system to satisfy ~~any~~ monitoring requirements prescribed by this Chapter, except those analyses covered by the monitoring assistance program.

C. The contractor shall take compliance samples for the categories of contaminants listed in A.R.S. § 49-360(A)(1) - (3) for a public water system that participates in the monitoring assistance program.

R18-4-122. Entry and Inspection of Public and Semipublic Water Systems

A. ~~A public water system or semipublic water system that is subject to regulation under this Chapter shall allow a designated representative of the Department, upon presenting appropriate credentials, to enter any establishment, facility, or other property to determine whether the water supplier has acted or is acting in compliance with the requirements of this Chapter. Such inspection may include inspection, at reasonable times, of records, files, papers, processes, controls, and facilities or testing any feature of a public water system or semipublic water system, including its source.~~ A Department inspector may, upon presenting appropriate credentials, enter and inspect a public water system and any semipublic water system that is subject to regulation under R18-4-102(B), to determine whether the public water system or semipublic water system is in compliance with the requirements of this Chapter. The inspector may take samples, inspect and copy records required to be maintained pursuant to this Chapter,

inspect facilities and equipment, take photographs, and take other reasonably necessary action to determine compliance with this Chapter.

B. If a water supplier for a public water system that participates in the monitoring assistance program denies or restricts the Department or contractor access to the public water system or prevents a Department or contractor employee from collecting a sample covered under the monitoring assistance program, the water supplier shall be legally responsible for the resulting noncompliance with monitoring requirements.

ARTICLE 2. MAXIMUM CONTAMINANT LEVELS AND MONITORING REQUIREMENTS; MONITORING ASSISTANCE PROGRAM

R18-4-206. Monitoring Requirements for Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cyanide, Fluoride, Mercury, Selenium, and Thallium.

A. A TNCWS is not required to monitor for the inorganic chemicals listed in this Section. Each CWS and NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor for the following inorganic chemicals:
   1. Each CWS shall monitor to determine compliance with the MCLs for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium.
   2. Each NTNCWS shall monitor to determine compliance with the MCLs for all of the inorganic chemicals listed in subsection (A)(1) except fluoride and arsenic.

B. No change

C. No change

D. A CWS ~~or~~, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, may composite samples for inorganic chemicals as prescribed in R18-4-219.

E. No change

F. No change

G. No change

H. If the analytical results of an initial sample indicate that there is an exceedance of a MCL, the Department may require that a confirmation sample be taken as soon as possible but no later than 2 weeks after the initial sample was taken at the same sampling point, except those analyses covered under the monitoring assistance program. The contractor may take a confirmation sample, with approval of the Department, within the time frames prescribed above.

I. No change

J. ~~A~~ Except for a water supplier subject to the monitoring assistance program, a water supplier may apply to the Department to conduct monitoring at a sampling point more frequently than the monitoring frequency specified in subsection (E). If the Department gives written approval to conduct more frequent monitoring at a sampling point, compliance shall be determined by a running annual average at the sampling point. If the running annual average at the sampling point is greater than the MCL, the public water system is out of compliance. If any single analytical results causes the running annual average to exceed the MCL, the public water system is immediately out of compliance.

K. A water supplier may make a written request to, or the Department under the monitoring assistance program, may reduce monitoring frequency for an inorganic chemical at a sampling point. The Department may reduce monitoring frequency at a sampling point as follows:
   1. Groundwater sampling points: The Department may reduce monitoring frequency at a groundwater sampling point from once every 3 years to a less frequent basis if a public water system has monitored at least once every 3 years for 9 years at the groundwater sampling point and all previous analytical results for the inorganic chemical are below the MCL.
   2. Surface water sampling points: The Department may reduce monitoring frequency at a surface water sampling point from annually to a less frequent basis if the surface water system has monitored annually at the surface water sampling point for at least 3 consecutive years and all previous analytical results for the inorganic chemical are below the MCL.
   3. The term of reduced monitoring shall not exceed 9 years.
   4. A CWS or NTNCWS shall take at least 1 sample at the sampling point during the reduced monitoring term.
   5. In determining the appropriate reduced monitoring frequency at a sampling point, the Department shall consider the following factors:
      a. Reported concentrations of the inorganic chemical from all previous monitoring;
      b. The degree of variation in the reported concentrations of the inorganic chemical; and
      c. Other factors that may affect the concentration of the inorganic chemical such as changes in groundwater pumping rates, the configuration of the CWS or NTNCWS, operating procedures, stream flows, or source water characteristics.
   6. The Department's decision to reduce monitoring frequency at a sampling point shall be in writing and shall specify the grounds for the decision. A water supplier may make a written request for reduced monitoring or the Department may grant reduced monitoring on its own. A water supplier shall provide documentation of analytical results that support the request for reduced monitoring. When a CWS or NTNCWS submits new data or if other data relevant to the public water system's appropriate monitoring frequency become available, the Department shall review the data and, if appropriate, revise its determination of monitoring frequency.
   7. A CWS or NTNCWS that uses a new source is not eligible for reduced monitoring until it completes 3 consecutive rounds of monitoring from the new source.

L. No change

R18-4-212. Volatile Organic Chemical; Monitoring Requirements

A. Each CWS ~~and~~, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor to determine compliance with the MCLs for the VOCs listed in R18-4-211. A TNCWS is not required to monitor for the VOCs listed in R18-4-211.

B. A CWS ~~or~~, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall conduct initial monitoring for VOCs in the monitoring year designated by the Department within the initial compliance period, except that a CWS or NTNCWS shall monitor for vinyl chloride only as prescribed in R18-4-213.

C. ~~Each~~ A CWS, and NTNCWS, the or contractor on behalf of a CWS or NTNCWS, shall monitor to determine compliance with the MCLs for VOCs at each sampling point as prescribed in R18-4-218.

D. A ~~water supplier~~ CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, may composite samples for VOCs, or the contractor may composite samples taken on behalf of a CWS or NTNCWS, as prescribed in R18-4-219.

E. A CWS, ~~or~~ NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall take 4 consecutive quarterly samples at

each sampling point for each VOC listed in R18-4-211 (except vinyl chloride) during the initial compliance period unless a CWS or NTNCWS qualifies for reduced monitoring or obtains a monitoring waiver. A CWS shall conduct initial monitoring for VOCs in the monitoring year designated by the Department within the initial compliance period.

F. No change
G. No change
H. No change
I. No change
J. No change
K. A CWS or NTNCWS that does not detect a VOC at a sampling point in a concentration that is ≥ 0.0005 mg/l during initial monitoring may submit a written request to the Department for a waiver from repeat monitoring requirements at that sampling point. The Department may initiate a waiver for a CWS or NTNCWS. A CWS or NTNCWS may not obtain a waiver from initial monitoring requirements. A monitoring waiver for a groundwater sampling point shall be effective for a term not to exceed 6 years. A monitoring waiver for a surface water sampling point shall be effective for a 3-year term. The Department's decision to grant or deny a request for a monitoring waiver shall be in writing. The Department may grant a monitoring waiver as follows:
   1. Use waiver: The Department may grant a use waiver if the Department determines that there has been no previous use of the VOC (including transport, storage, or disposal) within the watershed or zone of influence of a well.
   2. Susceptibility waiver: If previous use of the VOC is unknown or if it has been used previously, the Department may grant a susceptibility waiver based upon a vulnerability assessment. The Department shall consider the following factors in deciding whether to grant or deny a susceptibility waiver:
      a. Previous analytical results,
      b. The proximity of the CWS or NTNCWS to a potential point or nonpoint source of contamination. A point source of contamination includes a spill or leak of a chemical at or near a water treatment plant or distribution system pipeline, at a manufacturing, distribution or storage facility, or from a hazardous or municipal waste landfill or other waste handling or treatment facility,
      c. The environmental persistence and transport of the VOC,
      d. The number of persons served by the CWS or NTNCWS and the proximity of a smaller system to a larger system, and
      e. How well the water source is protected against contamination. The Department shall consider factors such as the depth of the well, the type of soil, and wellhead protection for a groundwater system and watershed protection for a surface water system.
   3. As a condition of a monitoring waiver for a groundwater sampling point, a CWS or NTNCWS shall take 1 sample at the groundwater sampling point during the time the waiver is effective (that is, 1 sample every 6 years). A CWS or NTNCWS shall update its vulnerability assessment during the term of the waiver, considering the factors listed in subsection (K)(2). The Department may renew a waiver based upon an updated vulnerability assessment provided the assessment reconfirms that the CWS or NTNCWS is not vulnerable to VOC contamination. If the Department does not reconfirm nonvulnerability within 3 years of the initial determination, the waiver automatically terminates and the CWS or NTNCWS shall sample annually at the groundwater sampling point in the next compliance period.
   4. A CWS or NTNCWS that receives a monitoring waiver for a surface water sampling point shall sample at the frequency specified by the Department (if any). A CWS or NTNCWS shall update its vulnerability assessment during each compliance period. The Department may update a public water system's vulnerability assessment for a CWS or NTNCWS that is subject to the monitoring assistance program. The Department may renew a waiver based upon an updated vulnerability assessment provided the assessment reconfirms that the CWS or NTNCWS is not vulnerable to VOC contamination. If the Department does not reconfirm nonvulnerability, the waiver automatically terminates and a CWS or NTNCWS shall sample annually at the surface water sampling point in the next compliance period.

R18-4-216. Synthetic Organic Chemicals; Monitoring Requirements

A. ~~Each~~ A CWS ~~and~~, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor to determine compliance with the MCLs for the SOCs listed in R18-4-215. A TNCWS is not required to conduct monitoring for SOCs.
B. A CWS, ~~or~~ NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall conduct initial monitoring for SOCs in the monitoring year designated by the Department within the initial compliance period.
C. ~~Each~~ A CWS, ~~or~~ NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor for SOCs at each sampling point as prescribed in R18-4-218.
D. A ~~water supplier~~ A CWS, ~~or~~ NTNCWS, or the contractor on behalf of a CWS or NTNCWS, may composite SOC samples as prescribed in R18-4-219.
E. ~~Each~~ A CWS, ~~or~~ NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall take 4 consecutive quarterly samples at each sampling point during each compliance period. If no synthetic organic chemicals are detected at a sampling point during the initial compliance period, then the Department may reduce monitoring frequency in repeat compliance periods pursuant to subsection (G) below. The Department's decision to reduce monitoring frequency shall be in writing.
F. No change
G. No change
H. No change
I. NO change
J. No change
K. No change
L. No change
M. A CWS or NTNCWS may submit a written request to the Department for a waiver from the monitoring requirements for a SOC. The Department may initiate a waiver for a CWS or NTNCWS. A monitoring waiver is effective for 1 compliance period. The Department's decision to grant a monitoring waiver shall be in writing. A CWS or NTNCWS shall reapply for a monitoring waiver in each subsequent compliance period. A CWS or NTNCWS that receives a monitoring waiver is not required to monitor for the SOC during the term of the waiver. The Department may grant a monitoring waiver as follows:
   1. Use waivers: The Department may grant a use waiver if the Department determines that there has been no previous use of the SOC (including transport, storage, or disposal) within the watershed or zone of influence of a

well. If previous use of the SOC is unknown or if the SOC has been used previously, the Department may grant a susceptibility waiver based upon a vulnerability assessment.

2. Susceptibility waiver: The Department may grant a susceptibility waiver based upon the results of a vulnerability assessment. The Department shall consider the following factors in deciding whether to grant or deny a susceptibility waiver:
   a. Previous analytical results,
   b. The proximity of the CWS or NTNCWS to a potential point source or nonpoint source of contamination. A point source of contamination includes a spill or leak of a SOC at or near a water treatment plant or distribution system pipeline, or at a manufacturing, distribution, or storage facility, or from a hazardous or municipal waste landfill, or from another waste handling or treatment facility. A nonpoint source includes the use of pesticides to control insect and weed pests on an agricultural area, forest, home, garden, or other land application use,
   c. The environmental persistence and transport of the SOC,
   d. How well the water source is protected against contamination by the SOC due to such factors as geology and well design (for example, depth to groundwater, type of soil and the integrity of the well casing),
   e. Elevated nitrate levels at the water supply source,
   f. Use of PCBs in equipment used in the production, storage, or distribution of water, and
   g. Wellhead protection assessments.

N. No change

R18-4-219. Sample compositing

A. No change
B. No change
C. A public water system may composite up to 5 samples from sampling sites within the same public water system. A public water system serving 3,300 or fewer persons may composite samples with samples taken from other public water systems serving 3,300 or fewer persons. The contractor may composite samples for a CWS or NTNCWS that is subject to the monitoring assistance program as prescribed in this Section.
D. No change
E. No change

R18-4-224. The Monitoring Assistance Program

A. A public water system that serves 10,000 or fewer persons shall participate in the monitoring assistance program. Within 60 days of receiving notice of participation in the monitoring assistance program, a public water system that determines that it serves more than 10,000 persons shall substantiate its determination by submitting that portion of the most recent census provided by the Arizona Department of Economic Security, Research Administration, Population Statistics Unit that supports the public water system's determination. By October 1 of each year, the public water system shall report the population it served as of June 30 of that year.
B. A public water system that serves more than 10,000 persons may participate in the monitoring assistance program for a minimum of 3 years, based upon its compliance period. The public water system shall notify the Department in writing, of its intention to participate in the monitoring assistance program at least 1 year in advance of its assigned monitoring year, unless its assigned monitoring year is 1999. Subject to payment of required fees, the public water system's participation shall begin at the start of its assigned monitoring year.
D. Under the monitoring assistance program, the contractor shall conduct monitoring for all inorganic chemicals listed in R18-4-206, R18-4-401, and R18-4-402 except nitrate, nitrite, and asbestos; all VOCs listed in R18-4-211 and R18-4-404, and all SOCs listed in R18-4-215 and R18-4-405.
E. A public water system shall retain responsibility for compliance with the public notice requirements of R18-4-105.
F. A public water system shall notify the Department, by October 1 of each year of any change in ownership and mailing address. The PWS shall notify the Department of the name of the person to whom billing is to be addressed, or number of meters or service connections of each size that the public water system had on June 30 that year.

R18-4-225. Fees for the Monitoring Assistance Program

A. A public water system that serves 10,000 or fewer persons shall be billed annually by the Department and shall pay fees to the Department for its costs under the monitoring assistance program.
B. In 1999, a PWS with 100 service connections shall pay an annual unit fee of $3.50. In years 2000 and 2001, the PWS shall pay an annual unit fee of $3.50 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.
C. In 1999, a public water system with fewer than 100 service connections shall pay an annual fee of $350. In years 2000 and 2001, the PWS shall pay an annual fee of $350 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.

Table A

Meter Size	Gallon Per Minute (GPM)	Meter Weight
≤3/4"	30	1.00
1"	50	1.67
1½"	100	3.33
2"	160	5.33
3"	300	10.00
4"	500	16.67
6"	1000	33.33
≥8"	1600	53.33

D. The Department shall calculate a total fee to the public water system as follows:
   1. Multiply the meter weight by the number of meters or service connections of each size that were capable of providing water as of June 30, preceding the billing date;
   2. Add the results for each category; and
   3. Multiply the result in paragraph 2 by the unit fee.
E. A public water system that serves more than 10,000 persons and that chooses to participate in the monitoring assistance

program shall participate for the entire compliance period and shall pay fees in accordance with R18-4-225.

OR

R18-4-225. Fees for the Monitoring Assistance Program

A. A public water system that serves 10,000 or fewer persons shall pay fees annually to the Department for its costs under the monitoring assistance program.

B. In 1999, a PWS with 100 service connections shall pay an annual unit fee of $3.50. In years 2000 and 2001, the PWS shall pay an annual unit fee of $3.50 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.

C. In 1999, a PWS with fewer than 100 service connections shall pay an annual unit fee of $3.50. In years 2000 and 2001, the PWS shall pay an annual unit fee of $3.50 adjusted on January 1 to reflect the weighted increase, if any, in the contract costs as of the close of the 12 month period ending on December 31, of that year.

Table A

Meter Size	Gallon Per Minute (GPM)	Meter Weight
≤3/4"	30	1.00
1"	50	1.67
1½"	100	3.33
2"	160	5.33
3"	300	10.00
4"	500	16.67
6"	1000	33.33
≥8"	1600	53.33

D. The Department shall calculate a total fee to the public water system as follows:
   1. Multiply the meter weight by the number of meters or service connections of each size that were capable of providing water as of June 30, preceding the billing date;
   2. Add the results for each category; and
   3. Multiply the result in paragraph 2 by the unit fee.

E. A public water system that serves more than 10,000 persons and that chooses to participate in the monitoring assistance program shall participate for the entire compliance period and shall pay fees in accordance with R18-4-225.

R18-4-226. Collection and Payment of Fees

A. A public water system shall forward fees for the monitoring assistance program to the Department in accordance with A.R.S. § 49-360(F).

B. The Department shall mail an invoice for the fees to the public water system annually. The public water system shall pay the invoiced amount to the Department, at the address listed on the invoice, by the indicated due date.

C. The Department may make refunds or billing corrections for a public water system that can demonstrate an overpayment, or error in the amount, or number, or size of meters billed. The public water system shall send a written request for a refund or correction to the Department, at the address on the invoice, within 90 days of the invoice date.

D. The Department may verify the number and size of meters, or if unmetered, the number of service connections.

E. The Department shall not waive program fees.

G. A PWS that fails to pay fees required shall be subject penalties in accordance with of A.R.S. § 49-354.

ARTICLE 4. SPECIAL MONITORING REQUIREMENTS

R18-4-401. Special Monitoring Requirements for Sulfate

A. ~~All community water systems [CWS] and nontransient, non-community water system [NTNCWS] shall conduct monitoring for sulfate.~~ Each CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor for sulfate.

B. ~~Monitoring for sulfate shall be conducted~~ Each CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall take 1 sample for sulfate at each sampling point as prescribed in R18-4-218.

C. ~~Each CWS or NTNCWS shall take one sample at each sampling point for sulfate before December 31, 1995. Monitoring for sulfate shall be repeated once every five years.~~ Each CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, shall monitor for sulfate once every 5 years.

D. A CWS or NTNCWS may apply for a waiver from sulfate monitoring requirements. The Department may initiate a waiver for a CWS or NTNCWS. The Department may waive sulfate monitoring requirements ~~for sulfate~~ at a sampling point if previous analytical results are available ~~which~~ that indicate that the concentration of sulfate does not exceed 250 mg/L, provided the monitoring data was collected after January 1, 1990. The Department's decision to waive sulfate monitoring requirements shall be in writing.

E. The Department may require a confirmation sample.

F. ~~A CWS or NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of a CWS or NTNCWS, may composite sulfate samples as prescribed in R18-4-219.

R18-4-402. Special Monitoring for Sodium

A. A CWS, or the contractor on behalf of a CWS, shall conduct monitoring for sodium.

B. Each CWS, or the contractor on behalf of a CWS, shall collect 1 sample per water treatment plant. Multiple wells drawing raw water from a single aquifer may, with Department approval, be considered 1 treatment plant for purposes of determining the minimum number of sodium samples required.

C. Each CWS, or the contractor on behalf of the CWS, shall collect and analyze 1 sample annually for each water treatment plant utilizing a surface water source, in whole or in part. A CWS shall collect and analyze 1 sample every 3 years for each water treatment plant utilizing only groundwater sources. The Department may require a water supplier to collect and analyze water samples more frequently in locations where the sodium content is variable.

R18-4-404. Special Monitoring for Unregulated Volatile Organic Chemicals

A. Each ~~community water system [CWS] and nontransient, non-community water system [NTNCWS] shall monitor for unregulated volatile organic chemicals for which maximum contaminant levels have not been established~~ CWS, NTNCWS, or the contractor on behalf of the CWS or NTNCWS, shall monitor for the unregulated VOCs listed in this subsection.
   1. Bromobenzene
   2. Bromodichloromethane

3. Bromoform
4. Bromomethane
5. Chlorodibomomethane
6. Chloroethane
7. Chloroform
8. Chlormethane
9. o-Chlorotouene
10. p-Chlorotoluene
11. Dibromomethane
12. m-Dichlorobenene
13. 1,1-Dichloroethane
14. 1,3,-Dichloropropane
15. 2,2-Dichloropropane
16. 1,1-Dichloropropene
17. 1,3-Dichloropropene
18. 1,1,1,2-Tetrachloroethane
19. 1,1,2,2-Tetrachloroethane
20. 1,2,3,-Trichloropropane

B. A ~~CWS or NTNCWS~~ CWS, NTNCWS, or the contractor on behalf of the CWS, shall~~-conduct monitoring~~ monitor for unregulated ~~volatile organic chemicals~~ VOCs at sampling points as prescribed in R18-4-218.

C. ~~Each CWS and NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of the CWS, shall take ~~four~~ 4 consecutive quarterly samples at each surface water sampling point for each unregulated ~~volatile organic chemical~~ VOC listed in this Section. ~~Each CWS and NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of the CWS, shall take ~~one~~ 1 sample at each groundwater sampling point for each unregulated ~~volatile organic chemical~~ VOC listed in this Section. ~~Each CWS and NTNCWS shall conduct repeat monitoring~~ A CWS, NTNCWS, or the contractor on behalf of the CWS, shall monitor for unregulated ~~volatile organic chemicals~~ VOCs at least once every ~~five~~ 5 years.

D. A CWS or NTNCWS may use monitoring data collected ~~any time after January 1, 1983~~ prior to the initial monitoring year to meet the initial monitoring requirements for unregulated ~~volatile organic chemicals~~ VOCs listed in this Section provided the monitoring data was collected after January 1, 1983.

E. ~~A CWS or NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of the CWS, may composite samples for the unregulated ~~volatile organic chemicals~~ VOCs listed in this Section as prescribed in R18-4-219.

F. A CWS or NTNCWS may apply for a waiver from the monitoring requirements for the unregulated ~~volatile organic chemicals~~ VOCs listed in this Section. The Department may grant a waiver based upon the criteria specified in R18-4-212(L). The Department may initiate a waiver for a CWS or NTNCWS.

G. A water supplier shall notify persons served by the public water system of the availability of the monitoring results for unregulated ~~volatile organic chemicals~~ VOCs listed in this Section by including a notice in the 1st set of water bills issued by the public water system after receipt of the monitoring results or by direct mail within ~~three~~ 3 months of receipt of the monitoring results. The notice shall identify a contact person and supply a telephone number ~~which~~ that may be called for more information on the monitoring results. For surface water systems, public notification is required only after the 1st quarter's monitoring results ~~and the~~. The notice shall include a statement that additional monitoring for unregulated ~~volatile organic chemicals~~ VOCs ~~will~~ shall be conducted for ~~three~~ 3 more quarters ~~with~~ and the monitoring results are available upon request.

R18-4-405. Special Monitoring for Unregulated Synthetic Organic Chemicals

A. ~~Each community water system and nontransient, noncommunity water system shall conduct monitoring for the following unregulated synthetic organic chemicals for which maximum contaminant levels have not been established:~~ Each CWS, NTNCWS, or the contractor on behalf of the CWS, shall monitor for the unregulated SOCs listed in this Section.

1. Aldicarb
2. Aldicarb sulfone
3. Aldicarb sulfoxide
4. Aldrin
5. Butachlor
6. Carbaryl
7. Dicamba
8. Dieldrin
9. 3-Hydroxycarbofuran
10. Methomyl
11. Metolachlor
12. Metribuzin
13. Propachlor

B. ~~Each CWS or NTNCWS shall conduct monitoring~~ A CWS, NTNCWS, or the contractor on behalf of the CWS or NTNCWS, shall monitor for the unregulated ~~synthetic organic chemicals~~ SOCs listed in this Section at sampling points as prescribed in R18-4-218.

C. ~~Each CWS and NTNCWS~~ A CWS, NTNCWS, or the contractor on behalf of the CWS or NTNCWS, shall take ~~four~~ 4 consecutive quarterly samples at each sampling point for each unregulated ~~synthetic organic chemical~~ SOC listed in this Section. Each CWS and NTNCWS shall complete initial monitoring for the unregulated ~~synthetic organic chemicals~~ SOCs listed in this Section and report the analytical results to the Department by December 31, 1995. ~~Each CWS and NTNCWS shall conduct repeat monitoring for the unregulated synthetic organic chemicals listed in this Section at least once every five years~~ A CWS, NTNCWS, or the contractor on behalf of the CWS or NTNCWS, shall monitor for unregulated SOCs at least once every 5 years.

D. A ~~CWS or NTNCWS~~ CWS, NTNCWS, or the contractor on behalf of the CWS, may composite samples for the unregulated ~~synthetic organic chemicals~~ SOCs listed in this Section as prescribed in R18-4-219.

E. ~~Each~~ A CWS and NTNCWS may submit a written request to the Department for a waiver from the monitoring requirements for unregulated ~~synthetic organic chemicals~~ SOCs listed in this Section. ~~Use waivers and susceptibility waivers for unregulated synthetic organic chemicals listed in this Section may be granted~~ The Department, under the monitoring assistance program, may grant a use waiver or a susceptibility waiver for an unregulated SOC based upon the waiver criteria specified in R18-4-216(M). The Department under the monitoring assistance program, may initiate a waiver to a CWS or NTNCWS.

~~**F.** Instead of performing the monitoring required by this Section, a CWS or NTNCWS serving fewer than 150 service connections may send a letter to the Department stating that the CWS or NTNCWS is available for sampling. This letter must be sent to the Department by January 1, 1994. The CWS or NTNCWS shall not send such samples to the Department unless requested to do so.~~